IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

OP.No. 3070 of 2000(M)

PETITIONERS:

JOSE HERMAN, SON OF GREGORY, PANAKKAL,
CHELLANAM VILLAGE, NORTH CHELLANAM P.O.

***ADDL.P2 TO P7 ARE IMPLEADED:**

P2. AGNES HERMAN, W/O.LATE JOSE HERMAN,
PANAKKAL, CHELLANAM VILLAGE, NORTH CHELLANAM P.O.

P3. GREGORY, S/O.LATE JOSE HERMAN,
VIA GIUSSEPPE, CIRINCIONE – 600 166.

P4. CLARA, W/O. TRVOR FRANCIS,
PANAKKAL, CHELLANAM VILLAGE, NORTH CHELLANAM P.O.

P5. ISABEELA, W/O.DOMIYANOSE,
THUNDIPARAMBIL HOUSE, SKM ROAD, ERNAKULAM – 18.

P6. BINDU, D/O. LATE JOSE HERMAN,
PANAKKAL, CHELLANAM VILLAGE, NORTH CHELLANAM P.O.

P7. JOSE ANTONY, S/O.LATAE JOSE HERMAN,
RESIDING AT ..DO..DO....

(*ADDL.P2 TO P7 ARE IMPLEADED AS PER ORDER DTD. 22/06/2000
IN C.M.P.NO.28451/2000)

BY ADV. SRI.V.GIRI

..2/-

RESPONDENTS:
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1. THE REVENUE DIVISIONAL OFFICER,
   FORT KOCHI (THE DEBIT RELIEF APPELLATE AUTHORITY,
   FORT KOCHI).

2. THE TAHSIDLAR, KOCHI (DEBT RELIEF TRIBUNAL, KOCHI).

3. THE DY.TAHSILDAR, KOCHI.

4. JOSEPH, SON OF PETER, ARACKAL HOUSE, CHELLANAM VILLAGE.

5. JOHN, S/O....DO....DO...DO....

6. KUNJAPPAN, S/O. DO....DO.....

7. RUBY THOMAS, W/O.LATE THOMAS, ...DO....DO.....

8. PETER SHYLY, S/O. ...DO...DO....DO.....

9. ANTONY LEVY, S/O....DO...DO...DO.....

10. ADALEENA, W/O.SEBASTIAN, ...DO...DO.....

11. SALEENA, D/O....DO....DO.....

12. JOSEPH, D/O....DO....DO.....

BY ADV. SRI.P.KESAVAN NAIR)
SRI.K.G.CLEETUS) for R4 to R12

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 21/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NOS.5066/2000, 33256/2001, 39690 AND 39691/2001 IN O.P.NO.3070/2000 M

DISMISSED

21/06/2007 **SD/- PIUS C. KURIAKOSE, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN OP 10577 OF 1995 AND 10394 OF 1995 DTD. 22/03/1999.**

EXT.P2: **COPY OF THE CERTIFICATE ISSUED BY THE VILLAGE OFFICER CERTIFYING THE INCOME OF THE PETITIONER.**

EXT.P3: **COPYOF THE REPORT OF THE THIRD RESPONDENT RECOMPUTING THE INCOME OF THE PETITIONER.**

EXT.P4; **COPY OF THE ORDER OF THE SECOND RESPONDENT REJECTING THE APPLICATION OF THE PETITIONER.**

EXT.P5: **COPY OF THE APPEAL MEMORANDUM FILED BEFORE FIRST RESPONDENT IN RELATION TO EXHIBIT P4.**

EXT.P6: **COPY OF THE ORDER OF THE FIRST RESPONDENT DTD. 3/01/2000 RECEIVED BY THE PETITIONER ON 6/01/2000.**

11TH RESPONDENT'S EXHIBITS:

EXT.R11(A): **COPY OF THE USUFRUCTORY MORTGAGE DEED NO.854 EXECUTED ON THE YEAR 1097 ME.**

EXT.R11): **COPY OF PURCHASE CERTIFICATE DTD. 18/01/977 FROM THE LAND TRIBUNAL, ERNAKULAM.**

EXT.R11(C): **COPY OF CERTIFICATE ISSUED BY THE SECRETARY (SPECIAL GRADE) GRAMA PANCHAYAT, CHELLANAM DTD. 12/07/99.**

...2/-

O.P.NO.3070/2000 M

EXT.R11(D): COPY OF CERTIFICATE ISSUED BY THE KERALA STATE ELECTRICITY BOARD, KANNAMALLY ELECTRICAL SECTION.

EXT.R11(E): COPY OF THE REPORT DTD. 23/10/99 OF THE ASST. EXECUTIVE ENGINEER.

EXT.R11(F): COPY OF LICENCE ISSUED TO THE PETITIONER BY THE COCHIN PORT TRUST.

EXT.R11(G): COPY OF THE WARRANT DTD. 28/01/2000 ISSUED BY THE TRIBUNAL TO THE VILLAGE OFFICER, CHELLANAM.

EXT.R11(H): COPY OF MAHAZAR DTD. 28/01/2000 PREPARED BY THE WARRANT OFFICER.

EXT.R11(I): COPY OF THE REPORT DTD. 29/01/2000 ISSUED BY THE VILLAGE OFFICER, CHELLANAM.

/TRUE COPY/

KSS

PIUS C. KURIAKOSE, J.

O.P.NO. 3070 OF 2000

Dated this the 21st day of June 2007

JUDGMENT

The petitioner claims that he is a debtor as defined under the Debt Relief Act 17 of 1977. According to him, his annual income as on the date of commencement of the Act was less than Rs.3,000/-. He relied on the report issued by the Village Officer in support of his claim regarding annual income. The Debt Relief Tribunal (Tahsildar), being dissatisfied with the Village Officer's report, deputed the Deputy Tahsildar for further enquiry. The Deputy Tahsildar submitted a report after conducting of enquiry. Ext.P3 is the report submitted by the Tahsildar. Relying on Ext.P3, the Tribunal decided that the annual income of the petitioner as on the date of commencement of Act 17 exceeds Rs.3,000/- and on that basis held that the petitioner is not a debtor who comes within the purview of Act 17 of 1977.

The above order was confirmed under Ext.P5 by the appellate authority under that statute.

2. The learned counsel for the petitioner assails Exts.P3 and P5 mainly on the ground that the Deputy Tahsildar's report which has been relied on by the Tribunal and also by the Appellate Authority was prepared without notice to the petitioner at all. In other words, the argument is that it is in gross violation of principles of natural justice that Ext.P3 report has been prepared.

3. I cannot agree with the submissions of the learned counsel for the petitioner. It is seen from Ext.P3 itself that the petitioner was issued with notice by the Deputy Tahsildar and that the petitioner even submitted a statement before him. It is not disputed before me that the petitioner is head of the family consisting of himself, his wife and five children. He holds ration card in his name and is head of the family even according to the ration card. It was found that in the declaration submitted by him in connection with the ration card he had declared his avocation for life to be business. This supports the respondent's case that the petitioner has income other than from the

agricultural property mentioned by the village officer and that the present stand of the petitioner that his sole source of income is agricultural property. The Debt Recovery Tribunal also noticed that the petitioner holds license for a fishing boat which was purchased with a loan availed by him from the State Bank of India. Though there is no definite material (except circumstances) to support my saying so, I have no doubt in my mind that the total debt of the petitioner at the relevant time is in excess of Rs.3,000/- inclusive of the amount owed to the SBT. Under the statute debtor is a person whose total debt is below Rs.3,000/- and whose annual income is below Rs.3,000/- In this case the petitioner did not qualify to be a debtor either way. In judicial Review, this court does not sit in judgment over the orders passed by the administrative authorities. This court is expected to review only the decision making process. I am of the view that there are no infirmities in the process by which decisions have been arrived at by the Tribunal and the appellate authority. Those findings are reasoned ones based on materials. I do not find any reason to upset those findings.

Challenge against Exts.P3 and P4 fails. The writ petition will stand dismissed. No costs.

PIUS C. KURIAKOSE,
JUDGE.

Dpk

PIUS C.KURIAKOSE, J

O.P.3070 OF 2000

JUDGMENT

21ST JUNE 2007